

19-4553

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**UNITED STATES OF AMERICA,**  
*Plaintiff/Appellee,*

**v.**

**THOMAS WALTER GILLEN**  
*Defendant/Appellant*

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On Appeal from the United States District Court  
for the Western District of Virginia  
Charlottesville Division (Hon. Norman K. Moon)

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RESPONSE TO MOTION TO SUSPEND BRIEFING SCHEDULE

COMES NOW counsel for appellant, Thomas Walter Gillen (hereinafter ‘Gillen’), and respectfully submits the following Response to the government’s motion to place this case in abeyance, or in the alternative, to suspend the briefing schedule. [Doc. # 46]

- 1) The undersigned counsel represented Gillen at all stages of the magistrate court and district court proceedings. The undersigned counsel

filed, *inter-alia*, the notice of appeal and ordered all necessary transcripts. The undersigned counsel was counsel of record on appeal for approximately one month. By Order entered on August 23, 2019 the Court relieved the undersigned as counsel of record [Doc. # 14] and by separate entry noted Mr. Augustus Invictus as sole appellate counsel.

- 2) As noted in the government's motion filed on January 2, 2020, it became unclear whether Gillen would continue to be represented by Mr. Invictus given that Mr. Invictus had been detained on criminal charges.
- 3) The government's motion [Doc. # 46] requested that in light of these circumstances the Court place the case in abeyance or suspend the briefing schedule. By Order entered on January 2, 2020, the Court entered an Order suspending the briefing schedule [Doc. # 49]. On January 29, 2020, the Court entered an Order, pursuant to Gillen's request, re-appointing the undersigned as sole counsel of record. [Doc. # 53-1]
- 4) Counsel takes the position that while the government's request, and the Order granting that request, was certainly appropriate on January 2, 2020, there remains no reason for the briefing schedule suspension to remain in place. Counsel for Gillen and counsel for the government have filed their respective briefs. The reason for the suspension was

uncertainty as to the status of Gillen's counsel going forward. That issue is now resolved. The undersigned is well prepared to proceed and the reason for suspension of the briefing schedule has been addressed and resolved.

- 5) Counsel has conferred with appellate counsel for the government on this matter. The government's position is that the suspension should remain in place pending a decision in USA v. Miselis, et al.

**WHEREFORE**, for the reasons stated herein, counsel respectfully requests that the Court enter an Order releasing this case from its current suspended status.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that on February 5, 2020, I electronically filed the foregoing document using the CM/ECF system that will automatically send notification of this filing to all parties.

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